

CITY OF SAN JOSÉ, CALIFORNIA  
Department of Planning, Building and Code Enforcement  
801 North First Street, Room 400  
San José, California 95110-1795

## STAFF REPORT

Hearing Date/Agenda Number  
P.C 03-24-2004 Item: 4.b.

File Number  
CP02-025

Application Type  
Conditional Use Permit

Council District  
7

Planning Area  
N/A

Assessor's Parcel Number(s)  
497-07-028

### PROJECT DESCRIPTION

Completed by: **Dipa Chundur**

Location: East side of Monterey Road 600 feet southerly of Fehren Drive

Gross Acreage: 1.08

Net Acreage: n/a

Net Density: n/a

Existing Zoning: CG Commercial General

Existing Use: Vehicular Storage

Proposed Zoning: CG Commercial General

Proposed Use: Auto Dealership

### GENERAL PLAN

Completed by: **DC**

Land Use/Transportation Diagram Designation  
General Commercial

Project Conformance:  
☒ Yes ☐ No  
☐ See Analysis and Recommendations

### SURROUNDING LAND USES AND ZONING

Completed by: **DC**

North: Vehicle storage

CG Commercial General

East: Residential

Unincorporated (County)

South: Commercial

CN Commercial Neighborhood

West: Construction yard

IP (PD) Industrial Park (Planned Development)

### ENVIRONMENTAL STATUS

Completed by: **DC**

☐ Environmental Impact Report found complete  
☒ Negative Declaration circulated on March 4, 2004  
☐ Negative Declaration adopted on

☐ Exempt  
☐ Environmental Review Incomplete

### FILE HISTORY

Completed by: **DC**

Annexation Title: Franklin 49

Date: 7/16/03

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**PUBLIC AGENCY COMMENTS RECEIVED**

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**Completed by: DC****Department of Public Works**

Attached

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**Other Departments and Agencies**

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**GENERAL CORRESPONDENCE**

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None Received

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**ANALYSIS AND RECOMMENDATIONS**

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**BACKGROUND**

The applicant is requesting a Conditional Use Permit to allow a new auto dealership including construction of a 7,545 square foot on a 1.08 gross acre site. Vehicle servicing and a car wash are proposed as incidental uses on the site. The carwash is intended to serve the dealership by prepping the vehicles for sale, and is not for the general public's use.

Adjacent uses are single family residences to the east, commercial uses to the south, and vehicle storage to the north. Surrounding land uses to the west across Monterey Highway include a construction yard and Caltrain Station.

**Project Description**

The proposed dealership is a 7,545-square-foot building, single-story structure that includes a 1,200 square foot mezzanine floor for office and storage. The lower main level consists primarily of the vehicle showroom, offices, storage, four (4) service bays, and a vehicle washing facility. The height of the building varies from 16 to 23 feet. The required number of parking spaces as per the Zoning Code is 35 spaces. The project includes 37 extra spaces for a total of 72 parking spaces.

preparation work (bay door raising, radio playing, minor accessory installations, vacuuming and detailing operations), and new vehicle deliveries.

In order to help minimize the project's potential noise impacts on the adjacent residential property, the service bays are oriented away from the residential property. An outdoor public address or paging systems, for communication with employees, is not allowed under this permit.

According to the noise report, the existing noise level generated from Monterey Road at the residential property line is 62 dB and in the residential rear yards is 57dB. The Zoning Code allows for commercial uses adjacent to residential uses a maximum of 55dB at the property line. The combined noise levels generated by the proposed project and Monterey Road exceeds the required standard of 55dB by 2-8dB at the most impacted residential rear yard.

According to the noise report prepared for the project, the construction of an 8 to 9 feet sound wall at the residential property line for a distance of 85 feet, as measured from the north corner of the property along the east property line would be adequate to reduce the project's potential noise impacts to a level consistent with the City's noise standards. The remainder of the wall would be 7 foot in height.

A supplementary report was prepared to evaluate the noise levels for a 7 feet high wall. This report indicated that the noise level would be 59 dB at the nearest residential use, which 4 dB higher than City of San Jose Standards.

## **GENERAL PLAN CONFORMANCE**

The proposed land use is consistent with the San Jose 2020 General Plan Land Use/Transportation Diagram designation of General Commercial in that the proposed use is commercial.

## **ANALYSIS**

The primary focus of the project analysis is its conformance to the Zoning Ordinance and the Commercial Design Guidelines, particularly how it addresses the residential interface along the easterly property line. As discussed, staff finds that the proposed project conforms to the Zoning Ordinance and the Commercial Design Guidelines. Also, the project permit includes conditions related to the auto dealership's use and operation, to minimize impacts on the adjacent residential uses.

### **Zoning Ordinance Conformance**

### Consistency with the Commercial Design Guidelines

The Commercial Design Guidelines identify standards for achieving the level of design quality that is appropriate for new development in all areas of the City as well as specific development types such as vehicle dealerships. In addition, the guideline includes specific provisions for commercial interfaces with adjacent residential uses. The proposed project site design as detailed below conforms to the Commercial Design Guidelines, particularly with respect to provisions that address residential interface concerns.


The proposed site design includes a 25-foot-wide area of landscaping in the front setback area. Because of the residential interface along the east side of the property, the project is proposing a 7 feet high sound wall with a 10 feet landscaped area in front of the wall. According to the initial noise report prepared for this project an 8 to 9 feet high wall is recommended for a distance of 85 feet as measured along the east property line from the north corner to reduce the noise impacts to the 55 dB level. Since the report does not differentiate the reduction in noise levels for a 7 feet wall verses an 8 or 9 feet wall a supplementary report was prepared. This supplementary report indicates that the noise level with a 7 feet wall would be 59 dB, which is 4 dB more than the maximum allowed by the Zoning Code and 2dB more than the existing conditions. Given a potential 4dB increase in the noise (and only 2db of additional noise than what currently exists) staff does not feel it is warranted to require a 9 feet high wall/or 2 feet of additional wall height to mitigate this additional noise. Therefore, staff recommends that the height of the wall be limited to 7 feet.

### Project Use and Operation

Due to the existing residential interface, the permit includes use conditions and limitations in the permit to minimize potential impacts.

The proposed solid wall along the east property line shall mitigate any noise impacts to acceptable levels and the height of the wall shall be designed such that it would minimize visual impacts to the adjacent residences. Conditions are incorporated in the permit for the construction of the solid wall to be in compliance with the prepared Noise report.

The service bays are designed such that they are oriented away from the residences and conditions would be incorporated in the permit to limit the hours of operation. Other permit conditions are intended to minimize impacts due to operation of mechanical equipment, loading/unloading, and lighting.



## **RECOMMENDATION**

The Planning staff recommends that the Planning Commission approve the requested Conditional Use Permit and include the following facts and findings in its Resolution.

The Planning Commission finds that the following are the relevant facts regarding this proposed project:

1. This site has a designation of General Commercial on the adopted San José 2020 General Plan Land Use/Transportation Diagram
2. The project site is located on a 1.08 gross-acre parcel in the CG Commercial General Zoning District.
3. The project site is currently used to store vehicles.
4. The proposed project consists of construction of a 7,545-square-foot automobile sales and service facility.
5. Vehicle sales is a permitted use in the CG Commercial General Zoning District, however outdoor sales within 150 feet of residential uses and incidental uses such as repair and car washes are conditional uses and require a Conditional Use Permit.
6. A Mitigated Negative Declaration has been circulated for this project, which indicates that certain mitigation measures will be incorporated into the project to prevent the occurrence of any significant adverse effect on the environment.
7. The proposed project conforms to the applicable setbacks of the CG Commercial General Zoning District.
8. The proposed project's parking conforms to the requirements of Title 20, Zoning Code.

This Planning Commission concludes and finds, based upon an analysis of the above facts that:

1. The proposed project is consistent with the site's designation of General Commercial on the adopted San José 2020 General Plan Land Use/Transportation Diagram of the City of

- a. Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area; or
  - b. Impair the utility or value of property of other persons located in the vicinity of the site; or
  - c. Be detrimental to public health, safety or general welfare; and
2. The proposed site is adequate in size and shape to accommodate the walls, fences, parking and loading facilities, landscaping and other development features prescribed in this title, or as is otherwise required in order to integrate said use with the uses in the surrounding areas; and
  3. The proposed site is adequately served:
    - a. By highways or streets of sufficient width and improved as necessary to carry the kind and quality of traffic such use would generate; and
    - b. By other public or private service facilities as are required.

In accordance with the findings set forth above, a Conditional Use Permit to use the subject property for said purpose specified above and subject to each and all of the conditions hereinafter set forth is hereby granted. This Planning Commission expressly declares that it would not have granted this permit, except upon and subject to each and all of said conditions, each and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners of the subject property, and all persons who use the subject property for the use conditionally permitted hereby.

## CONDITIONS PRECEDENT

This Conditional Use Permit shall have no force or effect and the subject property shall not be used for the hereby permitted uses unless and until all things required by the below-enumerated precedent conditions shall have been performed or caused to be performed and this Resolution has been recorded with the County Recorder.

1. **Acceptance and Payment of Recording Fees.** The "Acceptance of Permit and Conditions" form shall be **signed, notarized, and returned** to the Department of City Planning within 60 days from the date of passage of the resolution granting the permit.

**Wall Height.** The plans shall to be revised to indicate a 7 feet high wall along the east property line.

3. **Acceptance of Permit.** By accepting this Permit, the applicant will specifically acknowledge and agree as follows:
  - a. That any noncompliance with this Permit or any of its terms and conditions shall subject applicant to any and all enforcement actions pursued by the City to achieve compliance with this Permit, and its terms or conditions; and
  - b. Applicant shall ensure through all reasonable and appropriate means that any and all contractors, subcontractors or other agents of applicant are made aware of and shall fully comply with all of the terms and conditions of this Permit. Any noncompliance with this Permit by any of applicant's contractors, subcontractors or other agents of applicant shall be deemed a noncompliance with this permit by the applicant.
4. **Implementation of Use/Operation.** Acceptance and any implementation of the permit is evidence of acceptance of all conditions specified in this document and the applicant's intent to fully comply with said conditions.

### CONCURRENT CONDITIONS

The subject property shall be maintained and utilized in compliance with the below-enumerated conditions throughout the life of the permit:

1. **Conformance with Plans.** The development of the site shall conform to plans entitled "Kow-Loon Auto Sale Building Shell," last revised February 20<sup>th</sup>, 2004, on file with the Department of Planning Building and Code Enforcement.
2. **Limitation of Approved Uses.** Vehicle sales and leasing are the approved use. The vehicle sale/lease use is referred to as an automobile dealership and includes the following use/areas and related incidental uses:
  - a. Indoor showroom, with related office and storage areas
  - b. 4 Vehicle work stations (all within the building interior)
  - c. Dealership car wash
  - d. Outdoor sales area (as identified on the approved plan set)
3. **Use Restrictions.** The following functions and activities are prohibited on any portion of

5. **Amplified Sound.** No amplified sound shall be audible from adjacent properties. All outdoor paging of employees shall be achieved with individual devices given to employees. No outdoor public address or paging systems are to be installed or used on site.
6. **On-Site Loading/Unloading.** All loading and unloading of vehicles, parts, equipment, and other delivered goods shall only take place on-site as shown on the approved plan set during the specified hours of operation. No loading, unloading, staging on the site shall take place on the project's driveway. Incidental vehicle display parking can only occur in the loading area when loading activities are not occurring.
7. **Off-Site Loading/Unloading and Vehicle Storage Prohibited.** All loading and unloading of vehicles, parts, equipment, and other delivered goods shall take place on-site. No loading, unloading, staging or parking/storage of vehicles associated with the project shall take place in the public right-of-way.
8. **No Outside Storage.** No outside storage is permitted.
9. **Hazardous Materials.** Any hazardous materials regulated by Chapter 17.68 of the San José Municipal Code on the site must be used and stored in full compliance with the City's Hazardous Material Ordinance and the Hazardous Material Management Plan for the site approved by the San José Fire Prevention Bureau.
10. **Employee Education of Operational Hours and Restrictions.** The applicant shall, on an ongoing basis, educate all employees of the above stated restrictions on loading/unloading and service activities, and shall post rules and regulations in a readily visible location.
11. **Nuisance.** This use shall be operated in a manner which does not create a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City.
12. **Tree Removals.** No tree removals are approved under this permit. All tree removals on this site are subject to review by the Director of Planning. No tree larger than 56 inches in circumference, at a height 24 inches above the natural grade slope, may be removed without a Tree Removal Permit issued by the Director of Planning.
13. **Storm Water Discharge.** The applicant shall conform to the Non-Point Source Control requirement for storm water discharge associated with construction activity as required by the State Water Resource Control Board. Contact the Regional Water Quality Control Board at (415) 336-0068 for further information.

- b. *Minor Improvement Permit:* The public improvements conditioned as part of this permit require the execution of a Minor Street Improvement Permit that guarantees the completion of the public improvements to the satisfaction of the Director of Public Works. This permit includes privately engineered plans, insurance, surety deposit, and engineering and inspection fees.
- c. *Grading/Geology:* A grading permit is required prior to the issuance of a Public Works Clearance. If the project proposes to haul more than 10,000 cubic yards of cut/fill to or from the project site, a haul route permit is required. Prior to issuance of a grading permit, contact the Department of Transportation at (408) 277-4304 for more information concerning the requirements for obtaining this permit. Because this project involves a land disturbance of one or more acres, the applicant is required to submit a Notice of Intent to the State Water Resources Control Board and to prepare a Storm Water Pollution Prevention Plan (SWPPP) for controlling storm water discharges associated with construction activity. Copies of these documents must be submitted to the City Project Engineer prior to issuance of a grading permit. The Project site is within the State of California Seismic Hazard Zone. A soil investigation report addressing the potential hazard of liquefaction must be submitted to, reviewed and approved by the City Geologist prior to issuance of a grading permit or Public Works Clearance. The investigation should be consistent with the guidelines published by the State of California (CDMG Special Publication 117) and the Southern California Earthquake Center ("SCEC" report). A recommended depth of 50 feet should be explored and evaluated in the investigation.
- d. *Sewage Fees:* In accordance with City Ordinance all storm sewer area fees, sanitary sewer connection fees, and sewage treatment plant connection fees, less previous credits, are due and payable.
- e. *Undergrounding:* The In Lieu Undergrounding Fee shall be paid to the City for all frontage adjacent to Monterey Road prior to issuance of a Public Works clearance. 100 percent of the base fee in place at the time of payment will be due. (Currently, the base fee is \$224 per linear foot of frontage).
- f. *Reimbursement:* The developer will be required to reimburse the City for costs advanced for the construction of street improvements along Monterey Road in accordance with City Ordinance #19663.

- i. *Landscape:* Install street trees within the public right-of-way along the entire street frontage per City standards. The locations of the street trees will be in 4' by 4' cutouts in the back of curb. Contact the City Arborist at (408) 277-2756 for the designated street tree.
  - j. *Referrals:* This project should be referred to the California Department of Transportation (CalTrans). Any work in the public right-of-way on Monterey Road will require an encroachment permit from CalTrans.
15. **Fire Hydrants.** Public (off-site) and private (on-site) fire hydrants shall be provided as approved and at the exact location specified by Protection Engineering Section of the Fire Department to the satisfaction of the Fire Chief.
16. **Fire Hydrants and Driveways.** All fire hydrants shall be at least 10 feet from all driveways to the satisfaction of the Fire Chief.
17. **Fire Lanes.** Fire lanes, suitably designated "FIRE LANE - NO PARKING," shall be provided to the satisfaction of the Fire Chief.
18. **Building Clearance for Issuing Permits.** Prior to the issuance of a Building Permit, the following requirements must be met to the satisfaction of the Chief Building Official:
- a. *Americans with Disabilities Act.* The applicant shall provide appropriate access as required by the Americans with Disabilities Act (ADA).
  - b. *Construction Plans.* This permit file number, CP02-025, shall be printed on all construction plans submitted to the Building Division.
  - c. *Emergency Address Card.* The project developer shall file an Emergency Address Card, Form 200-14 with the City of San José Police Department.
19. **Construction Hours.** Construction shall be limited to the hours of 7:00 a.m. to 7:00 p.m. Monday through Friday for any on-site or off-site work within 500 feet of any residential unit. This includes the staging of equipment and construction personnel.
20. **Archaeology.** Pursuant to Section 7050.5 of the Health and Safety Code, and Section 5097.94 of the Public Resources Code of the State of California in the event of the discovery of human remains during construction, there shall be no further excavation or disturbance of

sufficient to remove all visible debris and soil. On-site areas visible to the public from the public right-of-way shall be cleaned of debris, rubbish, and trash at least once a week. While the project is under construction, the developer shall implement effective dust control measures to prevent dust and other airborne matter from leaving the site.

22. **Colors and Materials.** All building colors and materials are to be those specified on the approved plan set.
23. **Street Number Visibility.** Street numbers of the buildings shall be easily visible from the street at all times, day and night.
24. **Building Lighting.** Roof lights, wall washes/illumination on lighted roof panels, and any other method of illumination of the building is not allowed.
25. **Mechanical Equipment.** No roof-mounted or other exterior mechanical equipment shall be located within 120 feet of a residential property line unless a Sound Engineer has certified that noise level from such equipment will not exceed 55 DBA at the residential property line.
26. **Sound Wall Height Reference.** The required height of any sound wall shall be referenced from the pad height elevation of the nearest building(s). Sound wall construction shall comply with the recommendations of the Noise Report prepared by Edward L. Pack Associates, Inc. dated October 24, 2003. The wall shall be maintained in a vertical and solid manner.
27. **Landscaping.** Planting and irrigation are to be provided, as indicated, on the final Approved Plan Set. Landscaped areas shall be maintained and watered and all dead plant material is to be removed and replaced by the property owner. Irrigation is to be installed in accordance with Part 4 of Chapter 15.10 of Title 15 of the San José Municipal Code, Water Efficient Landscape Standards for New and Rehabilitated Landscaping and the City of San José Landscape and Irrigation Guidelines.
28. **Irrigation Standards.** The applicant shall install an adequately sized irrigation distribution system with automatic controllers in all areas to be landscaped that conforms to the Zonal Irrigation Plan in the Approved Plan Set and is consistent with the City of San José Landscape and Irrigation Guidelines. The design of the system shall be approved and stamped by a California Registered Landscape Architect.

31. **Signs.** No new signs are approved at this time. All proposed signs shall be subject to approval by the Director of Planning
32. **Anti-Graffiti.** The applicant shall remove all graffiti from buildings and wall surfaces within 48 hours of defacement.

#### **CONDITIONS SUBSEQUENT**

1. **Permit Expiration.** This Conditional Use Permit shall automatically expire two years from and after the date of adoption of the Resolution by the Planning Commission, or by the City Council on appeal, granting this Permit, if within such two-year period, the proposed use of this site or the construction of buildings has not commenced, pursuant to and in accordance with the provisions of this Conditional Use Permit. The date of adoption is the date the Resolution granting this Conditional Use Permit is approved by the Planning Commission. However, the Director of Planning may approve a Permit Adjustment to extend the validity of this Permit for a period of up to two years. The Permit Adjustment must be approved prior to the expiration of this Permit.
2. **Revocation, Suspension, Modification.** This Conditional Use Permit may be revoked, suspended or modified by the Planning Commission, or by the City Council on appeal, at any time regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 3, Chapter 20.44, Title 20 of the San José Municipal Code it finds:
  - a. A violation of any conditions of the Conditional Use Permit was not abated, corrected or rectified within the time specified on the notice of violation; or
  - b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or
  - c. The use as presently conducted creates a nuisance.

Attachments

cc: